

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

International Paper, Riverdale Mill
Air Facility ID No. 104-0003
Selma, Dallas County, Alabama

CONSENT ORDER NO. 13-____-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and International Paper, Riverdale Mill (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§22-22A-1 through 22-22A-16, (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a pulp and paper mill, Air Division Facility No. 104-0003 (hereinafter, the “Facility”), located in Dallas County in Selma, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42

U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. On March 14, 2002, the Department adopted 40 CFR Part 63, Subpart MM, into its regulations by reference (hereinafter, “MACT II”).

5. On December 1, 2003, the Department issued Major Source Title V Operating Permit #104-0003 to the Permittee, subject to certain conditions and requirements.

6. On April 15, 2004, the Permittee submitted a MACT II bubble calculation, which listed the No. 1 Smelt Tank particulate matter (PM) emission limit as 0.079 gr/sdcf as allowed in §63.282(a)(ii).

7. On January 14, 2013, the Department issued a renewal Major Source Title V Operating Permit #104-0003 (hereinafter, the “Permit”) to the Permittee, which contained updated conditions and requirements.

8. On March 5, 2013, the Permittee met with the Department and revealed that on November 7, 2012, the Permittee conducted a PM emissions test which indicated that the No. 1 Smelt Tank had a PM emissions concentration of 0.158 gr/sdcf and a PM emissions rate of 0.41 lb/ADTP.

DEPARTMENT’S CONTENTIONS

9. The test conducted on November 7, 2012, and submitted to the Department indicated that the MACT II bubble limit for the No. 1 Smelt Tank had been exceeded.

10. On March 19, 2013, the Department issued a Notice of Violation (NOV) to the Permittee for exceeding the MACT IIPM emission limit on the No. 1 Smelt Tank and for violating the New Source Performance Standard for the No. 1 Smelt Tank.

11. On May 14, 2013, the Department received from the Permittee correspondence in response to the March 19, 2013 NOV. Upon review, of the NOV response, the Department determined that New Source Performance Standards do not apply to the No. 1 Smelt Tank.

12. Pursuant to Ala. Code §22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed twenty-five thousand dollars (\$25,000.00) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed two hundred fifty thousand dollars (\$250,000.00). Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department considers the Permittee's failure to comply with the PM emissions limits of MACT II for the No. 1 Smelt Tank to be a serious issue.

B. THE STANDARD OF CARE: The Department considers the Permittee to have demonstrated a low standard of care by failing to properly control the PM emissions from the No. 1 Smelt Tank.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any significant economic benefit gained by the Permittee as a result of the violations referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Once discovered, the Permittee implemented several maintenance activities in order to alleviate the problem. The Permittee instituted new maintenance procedures to alleviate this problem in the future.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee was previously issued a Warning letter in November 2010, a Notice of Violation in August 2002, and a Consent Order in November 2002 by the Department. None of these other enforcement actions are related to the violation alleged above.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty to resolve this matter amicably, without incurring the unwarranted expense of litigation.

13. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate and consistent with the historical

penalty range imposed by the Department for similar violations (see Attachment A, which is made a part of Department's contentions).

14. The Department neither admits nor denies Permittee's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE'S CONTENTIONS

15. Permittee neither admits nor denies the Department's contentions. Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

16. The Permittee's emissions at the relevant time period reached only 24% of the allowable MACT II bubble emission limit for the facility. This Consent Order relates to the No. 1 Smelt Tank's MACT II emission limit exceedance discovered during the November 2012 emissions testing.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement,

and that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$15,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees that, immediately upon the effective date of this Order and continuing thereafter, Permittee shall take measures to ensure that PM emissions from the No. 1 Smelt Tank are properly controlled.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and/or deviations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request,

finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

INTERNATIONAL PAPER
RIVERDALE MILL

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Lance R. LeFleur
Director

(Printed Name)

(Printed Title)

(Date Signed)

(Date Executed)

Attachment A

International Paper, Riverdale Mill ADEM Air Facility ID No. 104-0003

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to meet MACT II PM Emission Limit	1	\$10,000	\$5,000	
Totals:	1	\$10,000	\$5,000	

Economic Benefit:

Mitigating Factors:

Ability to Pay:

Other Factors:

Civil Penalty: \$15,000

* See the Stipulations and Contentions portions of the Order for detailed descriptions of each violation and consideration of the penalty factors.